

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

3

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 RICARDO RAMOS-TADEO,

8 Defendant.

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10 No. CR-07-6042-FVS

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12 ORDER DENYING MOTION FOR
13 RECONSIDERATION

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15 **THIS MATTER** comes before the Court on the Government's Motion For
16 Reconsideration, Ct. Rec. 45. Assistant United States Attorney Shawn
17 N. Anderson represents the United States. Kelly A. Canary represents
18 the Defendant. The United States moves the Court to reconsider its
19 decision to sentence the Defendant pursuant to 8 U.S.C. § 1326(a)
20 rather than Section 1326(b).

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22 However, the Court lacks authority to grant the Government's
23 request. The Government has cited no authority indicating that
24 reconsideration is available after a district court has pronounced
25 sentence. While the Court may amend a sentence in order to correct
26 "arithmetical, technical, or other clear error," Fed. R. Crim. P. 35,
the Government has not argued, much less demonstrated, that any such
error occurred.

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28 Moreover, the Government's arguments are unpersuasive. The
29 Government premises its motion for reconsideration on the contention

1 that there was no indictment error in this case. The Court has
2 already considered and rejected the arguments advanced in support of
3 this contention.

4 Finally, the Government misinterprets the basis of the Court's
5 prior ruling. As the Court has previously explained, "Even if there
6 were no indictment error in this case, the temporal relationship
7 between the Defendant's prior deportation and prior felony conviction
8 has not been proven to a jury." The Defendant pled guilty to the
9 charge in the indictment without the benefit of a plea agreement. The
10 Defendant did not admit to the date of his prior deportation. Thus,
11 under *Salazar-Lopez*, the imposition of a sentence in excess of 24
12 months would constitute *Apprendi* error. Accordingly,

13 **IT IS HEREBY ORDERED:**

14 1. The Government's Motion For Reconsideration, **Ct. Rec. 45**, is
15 **DENIED**.

16 2. The Government's Motion to Expedite, **Ct. Rec. 47**, is **DENIED**.

17 **IT IS SO ORDERED.** The District Court Executive is hereby
18 directed to enter this order and furnish copies to counsel.

19 **DATED** this 14th day of April, 2008.

20

s/ Fred Van Sickle
21 Fred Van Sickle
22 United States District Judge
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